

October 7, 2021

Via ECF

Honorable Robert W. Lehrburger
United States Magistrate Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Natural Resources Defense Council v. United States Environmental Protection Agency*, 20 Civ. 900 (ALC) (RWL)

Dear Judge Lehrburger:

We write jointly on behalf of Defendant the United States Environmental Protection Agency (“EPA”) and Plaintiff the Natural Resources Defense Council (“NRDC”) to request a modification of the remaining processing and production deadlines contained in the Court’s May 14, 2020 Order. *See* ECF No. 16.

Under the current schedule, EPA reviews documents at a rate of 300 documents per month and produces any responsive, non-exempt documents, or portions thereof, on a rolling basis to NRDC. *See id.* at 2. As noted in the September 21, 2021 joint status report, the parties have reached an agreement to narrow the scope of documents remaining for review in response to NRDC’s FOIA request. *See* ECF No. 31. EPA has agreed to review and process a subset of the remaining universe of potentially responsive documents—consisting of approximately 2,100 documents—and complete processing of that subset and production of any responsive, non-exempt records, or portions thereof, by December 31, 2021. *Id.* Accordingly, the parties respectfully request that the Court modify the schedule set forth in the May 14, 2020 Order as follows:

- The parties agree to narrow the scope of potentially responsive documents remaining for review by having EPA apply the search terms [“CWA” OR “clean water”] AND [“talking points” OR “speech*” OR “tps”] to the documents remaining to be reviewed. That narrowing results in approximately 2,100 documents (the “Narrowed Set”).
- EPA will review the Narrowed Set at a rate of 1,000 documents per month, and produce any responsive, non-exempt documents, or portions thereof, by December 10, 2021. EPA will review those documents consistent with *Ecological Rights Foundation v. U.S. EPA*, Civ. No. 19-980, 2021 WL 535725 (D.D.C. Feb. 13, 2021).
- By December 31, 2021, EPA will provide to NRDC information pertaining to any record, or portion thereof, that has been withheld from production as exempt, pursuant to 40 C.F.R. § 2.104(h)-(i).

- By January 14, 2022, NRDC will identify any withholdings, or any other aspect of EPA's search or justifications for withholdings, that it intends to challenge, and the parties will meet and confer in an attempt to resolve any such disputes.
- By February 14, 2022, the parties will write jointly to the Court to advise whether summary judgment briefing is necessary.

We thank the Court for its consideration of this request.

Respectfully submitted,

s/ Margaret Hsieh
Margaret Hsieh
Natural Resources Defense Council
40 West 20th Street, 11th Floor
New York, New York 10011
mhsieh@nrdc.org
Tel: 212-727-4652
Attorney for Plaintiff

AUDREY STRAUSS
United States Attorney for the
Southern District of New York

By: s/ Natasha W. Teleanu
NATASHA W. TELEANU
Assistant United States Attorney
Telephone 212-637-2528
Facsimile 212-637-2786
natasha.teleanu@usdoj.gov
Attorney for Defendant